Arbitration Worksheet

NOTE: **Transmit to all parties.** This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
Was an offer of compensation made through the MLS or otherwise?					
Is the claimant a party to whom the listing broker's offer of compensation was extended?					
3. What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally-recognized non-agent, other?					
4. Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?					
5. How was the first introduction to the property that was sold/ leased made?					
(a) Did the buyer/tenant find that property on their own?					
(b) Who first introduced the purchaser or tenant to that property?					
(c) Was the introduction made to a different representative of the buyer/tenant?					
(d) Was the "introduction" merely a mention that the property was listed?					
(e) Was the property introduced as an open house?					
(f) What subsequent efforts were made by the broker after the open house?					
(g) What property was first introduced?					
6. When was the first introduction to the property that was sold/leased made?					

Arbitration Worksheet (continued)

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Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
(a) Was the introduction made when the buyer/tenant had a specific need for that type of property?					
(b) Was the introduction instrumental in creating the desire to purchase/lease?					
(c) Did the buyer know about the property before the broker contacted him? Did he know it was for sale/lease?					
(d) Were there previous dealings between the buyer and the seller?					
7. What efforts subsequent to the first introduction to the property were made by the broker introducing the property that was sold or leased?					
8. If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?					
9. Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker (estrangement)?					
(a) Were agency disclosures made? When?					
(b) Was the potential for dual agency disclosed? When?					
10. Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the brokers inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction (abandonment)?					

Arbitration Worksheet (continued)

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Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
11. Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser?					
12. Did the buyer make the decision to buy independent of the broker's efforts/information?					
13. Did the seller act in bad faith to deprive the broker of his commission?					
(a) Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker's commission?					
(b) Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?					
(c) Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?					
14. Did the buyer seek to freeze out the broker?					
(a) Did the buyer seek another broker in order to get a lower price?					
(b) Did the buyer express the desire not to deal with the broker and refuse to negotiate through him?					
(c) Did the contract provide that no brokers or certain brokers had been involved?					

Arbitration Worksheet (continued)

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Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
15. Did the original introduction of the					
purchaser or tenant to the property					
start an uninterrupted series of					
events leading to the sale or lease, or was the series of events hindered					
or interrupted in any way?					
16. If there was an interruption or					
break in the original series of					
events, how was it caused, and					
by whom?					
(a) Did the seller change the					
listing agreement from an					
open listing to an exclusive					
listing agreement with another broker?					
(b) Did the buyer terminate the					
relationship with the broker?					
Why?					
(c) Was there interference in the					
series of events from any					
outside or intervening cause					
or party?					
(d) Was there abandonment or					
estrangement?					
17. Did the cooperating broker (or					
second cooperating broker) initiate a separate series of					
events, unrelated to and not					
dependent on any other broker's					
efforts, which led to the					
successful transaction—that is,					
did the broker perform services					
which assisted the buyer in					
making his decision to purchase?					
(a) Did the broker make					
preparations to show the					
property to the buyer? (b) Did the broker make					
continued efforts after					
showing the property?					
(c) Did the broker remove an					
impediment to the sale?					
(d) Did the broker make a					
proposal upon which the final					
transaction was based?					
(e) Did the broker motivate the					,,,,
buyer to purchase?					(Adopted 11/03)